

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|--|--|------------------------------------|--|
| Investigator: Jeffrey Mulinelli (S) | Team: Squad #1 | CCRB Case #: 201411847 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 11/19/2014 6:00 AM | Location of Incident: East 154th Street and Cortlandt Avenue | Precinct: 40 | 18 Mo. SOL 5/19/2016 | EO SOL 5/19/2016 | |
| Date/Time CV Reported Sat, 11/22/2014 11:48 PM | CV Reported At: CCRB | How CV Reported: Call Processing System | Date/Time Received at CCRB Sat, 11/22/2014 11:48 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. DT3 Matthew Wright | 1567 | 940872 | WARRSEC |
| 2. DT2 Robert Graves | 04588 | 945352 | WARRSEC |
| 3. SGT John Albertelli | 03235 | 910972 | WARRSEC |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.DT3 Matthew Wright | Abuse: Det. Matthew Wright entered and searched § 87(2)(b) | |
| B.DT2 Robert Graves | Abuse: Det. Robert Graves entered and searched § 87(2)(b) | |
| C.SGT John Albertelli | Abuse: Sgt. John Albertelli entered and searched § 87(2)(b) | |
| D.DT3 Matthew Wright | Abuse: Det. Matthew Wright detained § 87(2)(b) | |
| E.DT2 Robert Graves | Abuse: Det. Robert Graves detained § 87(2)(b) | |
| F.SGT John Albertelli | Abuse: Sgt. John Albertelli detained § 87(2)(b) | |
| G.DT3 Matthew Wright | Force: Det. Matthew Wright used physical force against § 87(2)(b) | |
| H.DT2 Robert Graves | Force: Det. Robert Graves used physical force against § 87(2)(b) | |
| I.SGT John Albertelli | Force: Sgt. John Albertelli used physical force against § 87(2)(b) | |
| J.DT3 Matthew Wright | Abuse: Det. Matthew Wright damaged § 87(2)(b)'s property. | |
| K.DT2 Robert Graves | Abuse: Det. Robert Graves damaged § 87(2)(b)'s property. | |
| L.SGT John Albertelli | Abuse: Sgt. John Albertelli damaged § 87(2)(b)'s property. | |
| M.SGT John Albertelli | Abuse: Sgt. John Albertelli refused to provide his name and shield number to § 87(2)(b) | |
| N.DT2 Robert Graves | Abuse: Det. Robert Graves refused to provide his name and shield number to § 87(2)(b) | |

Case Summary

On November 22, 2014, § 87(2)(b) filed this complaint with the CCRB via the call processing system (encl. 4A-B).

At approximately 6:00 a.m. on November 19, 2014, § 87(2)(b) and § 87(2)(b) were inside their apartment at 367 East 154th Street, in the Bronx. Three plainclothes officers, identified as Sgt. John Albertelli, Det. Matthew Wright, and Det. Robert Graves, knocked on the door and said they were executing a warrant. Either § 87(2)(b) or § 87(2)(b) opened the apartment door and all three officers allegedly pushed into the apartment (**Allegations A, B, and C**). Det. Wright showed § 87(2)(b) and § 87(2)(b) a photograph of the man they were looking for. Both said that they did not recognize the man and told the officers that they were at the wrong apartment. Sgt. Albertelli, Det. Wright, and Det. Graves then grabbed § 87(2)(b) by the arms and handcuffed him (**Allegations D, E, and F**). In the process, the officers allegedly pushed § 87(2)(b) to the ground. The officers then walked § 87(2)(b) into the living room, allegedly twisting his handcuffed wrists as they walked. The officers allegedly pushed § 87(2)(b) onto the couch (**Allegations G, H, and I**). § 87(2)(b) and § 87(2)(b) both alleged that the couch was damaged at this time (**Allegations J, K, and L**). Sgt. Albertelli and Det. Graves then went into the apartment's bedroom, where they looked inside closets and under beds (**subsumed with Allegations B and C**). When Sgt. Albertelli and Det. Graves returned, the officers removed § 87(2)(b) handcuffs and exited the apartment. § 87(2)(b) asked all three officers for their identifying information. Det. Wright wrote his name on a piece of paper, but Sgt. Albertelli and Det. Graves allegedly did not respond to the request (**Allegations M and N**). The officers left the apartment and neither § 87(2)(b) nor § 87(2)(b) was arrested or issued a summons. After the officers left, § 87(2)(b) observed that her bedroom door and lock cylinder on her front door were damaged (**subsumed with Allegations J, K, and L**).

§ 87(2)(b) attorney provided a forty second video for this incident, which was recorded by § 87(2)(b) on her cell phone [see 17 Board Review].



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Mediation, Civil, and Criminal Histories

This case was not suitable for mediation because § 87(2)(b) and § 87(2)(b) complained of property damage. Additionally, § 87(2)(b) filed a lawsuit, which is currently pending [see 01-04 Board Review].

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by either § 87(2)(b) or § 87(2)(b) [see 07 Board Review].
- Sgt. John Albertelli has been a member of service for 24 years. He has had two total allegations made against him as part of two additional cases. In case 201501641 an entry allegation was closed as unsubstantiated.

- Det. Matthew Wright has been a member of service for nine years. He has had 11 allegations made against him as part of four additional cases. In case 200705324 an entry allegation was closed as exonerated.
- Det. Robert Graves has been a member of service for 28 years. He has had two prior allegations made against him as part of two prior cases. In case 201302991 an entry allegation was closed as substantiated. No disciplinary action was taken in that case. There were no relevant facts comparable to this case.

Finding and Recommendations

Allegation A - Abuse of Authority: Det. Matthew Wright entered and searched § 87(2)(b)

Allegation B - Abuse of Authority: Det. Robert Graves entered and searched § 87(2)(b)

Allegation C - Abuse of Authority: Sgt. John Albertelli entered and searched § 87(2)(b)

Allegation D - Abuse of Authority: Det. Matthew Wright detained § 87(2)(b)

Allegation E - Abuse of Authority: Det. Robert Graves detained § 87(2)(b)

Allegation F - Abuse of Authority: Sgt. John Albertelli detained § 87(2)(b)

It is undisputed that Sgt. Albertelli, Det. Matthew Wright, and Det. Robert Graves entered § 87(2)(b) while they were executing a bench warrant for § 87(2)(b). It is also undisputed that the officers handcuffed § 87(2)(b).

§ 87(2)(b) testified that she approached the front door after hearing persistent knocking. When § 87(2)(b) asked who was there, the officers identified themselves as probation officers and allegedly said that they would kick the door down if she did not let them into the apartment. § 87(2)(b) and § 87(2)(b) both testified that § 87(2)(b) opened the apartment's front door. Each of the three officers put one foot through the doorway, inside the apartment. Det. Wright, who was the lead investigator for the warrant, showed § 87(2)(b) and § 87(2)(b) a picture of the man they were looking for. In response, § 87(2)(b) and § 87(2)(b) both told the officers that they had come to the wrong apartment. However, all three officers continued to move into the apartment, until they were entirely through the doorway. § 87(2)(b) alleged that Det. Wright pushed him in the chest while walking into the apartment. § 87(2)(b) and § 87(2)(b) both testified that they did not give the officers permission to enter the apartment and repeatedly told them that they were at the wrong apartment. § 87(2)(b) and § 87(2)(b) both testified that the officers physically engaged § 87(2)(b) immediately, and that they handcuffed him in the kitchen before bringing him to the couch in the living room [see 01-04 Board Review].

§ 87(2)(b) attorney provided a forty second video for this incident, which is located in IA #80. In the video, which was filmed by § 87(2)(b) and § 87(2)(b) argue with Sgt. Albertelli and Det. Wright about their presence in the apartment. § 87(2)(b) tells the officers twice that he let them inside and did not have to do so [see 17 Board Review].



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Det. Wright, Det. Graves, and Sgt. Albertelli arrived at the incident location while executing a bench warrant for § 87(2)(b). According to this warrant, § 87(2)(b) home address was § 87(2)(b) in the Bronx [see 14 Board Review], an address that all of the

officers testified to visiting earlier that day without success. This address is approximately five blocks from the incident location [see 15 Board Review]. Det. Wright testified that he obtained the address of § 87(2)(b) in the Bronx, from a probation report on which § 87(2)(b) gave his address as such [see 09, 20 Board Review]. Following his interview, Det. Wright faxed documentation to the investigator, including the probation report, which he used to determine that § 87(2)(b) lived at § 87(2)(b) in the Bronx. The documents revealed that § 87(2)(b) last reported his address as § 87(2)(b) on March 19, 2012, more than two and a half years prior to the incident. The documents also showed that § 87(2)(b) most recently reported address, as of September 4, 2014, was § 87(2)(b) [see 20 Board Review].

In their CCRB statements, all three officers stated that § 87(2)(b) opened the door when they knocked. All of the officers denied using any other techniques to get § 87(2)(b) to open the door. Det. Wright stated that he asked § 87(2)(b) for permission to enter the apartment. According to Det. Wright, she granted this permission verbally. Sgt. Albertelli testified that § 87(2)(b) gave the officers verbal permission to enter the apartment and did not object when they went inside. Det. Graves stated that § 87(2)(b) gestured with her hand to indicate that the officers were allowed inside her apartment. Shortly thereafter, § 87(2)(b) approached the officers in an irate manner by cursing loudly, telling the officers to leave, and waving his arms. The officers quickly realized that § 87(2)(b) was not the man that they were looking for. Det. Wright and Det. Graves believed that they had entered the apartment with § 87(2)(b)'s consent. While they acknowledged that § 87(2)(b) rescinded her consent, they did not believe or know whether he was a tenant and able to rescind consent. Sgt. Albertelli did not know if § 87(2)(b) had the authority to rescind § 87(2)(b)'s consent because § 87(2)(b) was yelling and speaking nonsensically. The officers said that they had no intention of placing § 87(2)(b) under arrest but decided to handcuff § 87(2)(b) because his behavior made them fear for their safety. Sgt. Albertelli also testified that § 87(2)(b) behavior raised his suspicion that he was hiding § 87(2)(b) in the apartment. The officers did not attempt to rectify the situation by leaving the apartment [see 08-13 Board Review].

A bench warrant, which is the equivalent of an arrest warrant, permits entry into the suspect's residence, provided that the officers have a reasonable belief that the suspect is present at the time of the entry. **People v. Smith**, 2005 NY Slip 51408U (Sup. Ct. Bronx Cty., 2005) [see 22 Board Review]. According to **People v. Gonzalez**, 1976 39 N.Y.2d 122, official coercion nullifies apparent consent [see 21 Board Review]. As per **People v. Lewis** (277 A.D.2d 1010, 1010-11 (App. Div. 2000)), a guest possesses the authority to consent to an entry [see 24 Board Review].

As noted above, the address on the bench warrant for § 87(2)(b) was not the same as the incident location. Det. Wright testified that he obtained the address of the incident location from a probation report for § 87(2)(b). At the time the warrant was executed, the information from the probation report was two years and eight months old. The documented evidence which led Det. Wright and his partners to the incident location was not of recent vintage, and in the absence of additional evidence leading the officers to § 87(2)(b)'s residence, the investigation determined that the officers did not have reasonable belief that § 87(2)(b) would be present there.

Based on the above, the validity of the officers' entry was contingent upon consent. Due to contradicting statements and video indicating that § 87(2)(b) provided consent to enter, it remains in dispute whether § 87(2)(b) consented to the officers' entry, or if her consent was coerced by officers threatening to kick down the door if she did not open it. However, consistent

with the video and civilian statements, Det. Wright and Det. Graves acknowledged that § 87(2)(b) statements and behavior led them to believe that he rescinded § 87(2)(b)'s consent. As per People v. Lewis, § 87(2)(b) had the authority to consent to an entry, and he similarly would have had the authority to rescind that consent. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation G - Force: Det. Matthew Wright used physical force against § 87(2)(b)

Allegation H - Force: Det. Robert Graves used physical force against § 87(2)(b)

Allegation I - Force: Sgt. John Albertelli used physical force against § 87(2)(b)

It is undisputed that Sgt. Albertelli, Det. Wright, and Det. Graves handcuffed § 87(2)(b) soon after they entered the apartment.

In her CCRB statement, § 87(2)(b) stated that the officers grabbed § 87(2)(b) immediately after entering the apartment. The officers removed their handcuffs, pushed § 87(2)(b) into the kitchen, and attempted to pull his arms behind his back. The officers informed § 87(2)(b) that he was not under arrest, but he continued to resist the officers. According to § 87(2)(b) tensed his arms to prevent the officers from handcuffing him. The officers ultimately succeeded in handcuffing him and walked him into the living room by pulling on his wrists. § 87(2)(b) told the officers that this action caused him pain, but they disregarded the statement. § 87(2)(b) testified that § 87(2)(b) was no longer resisting the officers at this time. The officers then removed § 87(2)(b) from the kitchen and escorted him to the living room, where they allegedly pushed him onto the couch [see 01 Board Review].

§ 87(2)(b) statements to the CCRB and in his 50-H hearing largely corroborated § 87(2)(b)'s testimony. However, contrary to § 87(2)(b)'s testimony, § 87(2)(b) stated that the officers took him to the ground and handcuffed him to the refrigerator prior to escorting him to the living room couch. The officers twisted § 87(2)(b) wrists, causing him pain. The officers allegedly pushed § 87(2)(b) onto the couch [see 03-04 Board Review].

According to Sgt. Albertelli, Det. Wright, and Det. Graves, § 87(2)(b) was agitated from the time the officers arrived at the apartment. All three officers said that § 87(2)(b) yelled loudly, cursed at the officers, and told them to leave. Additionally, the officers testified that § 87(2)(b) moved towards the officers and waved his arms over his head. Sgt. Albertelli initially stated that § 87(2)(b) bumped one of the officers with his chest. In his second interview for this case, Sgt. Albertelli testified that § 87(2)(b) shoved all three officers. Neither of his partners repeated this charge. Sgt. Albertelli, Det. Wright, and Det. Graves all testified that they repeatedly told § 87(2)(b) to calm down, but he disregarded these orders. The officers stated that they handcuffed § 87(2)(b) by pulling his arms behind his back and denied using any additional force. They also denied pulling § 87(2)(b) by the handcuffs or twisting his wrists. Det. Wright and Det. Graves denied that § 87(2)(b) was pushed onto the couch. Sgt. Albertelli stated in his first interview that § 87(2)(b) may have refused to sit down and may

have been pushed onto the couch but denied having any specific memory of it. In his second interview, Sgt. Albertelli described that he and his partners guided § 87(2)(b) into a seated position on the couch [see 08-13 Board Review].

According to § 87(2)(b) medical records, he was admitted to the § 87(2)(b). At this time, he was diagnosed with a right wrist sprain and given pain medications. On § 87(2)(b), § 87(2)(b) went to § 87(2)(b) Hospital Center, where he complained of ongoing pain and swelling in his right forearm and hand. He was diagnosed with a deformity of the first metacarpal bone [See medical documents file].

§ 87(2)(b), § 87(2)(a) Gen. Mun. § 50-h(3)

§ 87(2)(g)

§ 87(2)(b). However, the circumstances leading up to his handcuffing are contested. According to § 87(2)(b) and § 87(2)(b) did not take any actions which would cause the officers to feel threatened before he was handcuffed. However, both § 87(2)(b) and § 87(2)(b) stated that he subsequently resisted arrest by making his body tense. All three officers, however, testified that § 87(2)(b) behavior was erratic and threatening. They handcuffed him in response to these actions but denied using any additional force or twisting his handcuffs.

§ 87(2)(b), § 87(2)(g)

Allegation J - Abuse of Authority: Det. Matthew Wright damaged § 87(2)(b) s property.

Allegation K - Abuse of Authority: Det. Robert Graves damaged § 87(2)(b) s property.

Allegation L - Abuse of Authority: Sgt. John Albertelli damaged § 87(2)(b) s property.

§ 87(2)(b) and § 87(2)(b) both testified that the officers brought § 87(2)(b) to the living room and pushed him onto the futon, causing it to break [see 01, 03-04 Board Review]. Specifically, § 87(2)(b) stated that the right front part of the futon's frame was damaged. § 87(2)(b) also submitted a photo, which shows § 87(2)(b) seated on the couch surrounded by three plainclothes officers [see 16 Board Review]. In this photo, the right front leg of the futon appears that it could be leaning or broken. § 87(2)(b) has since replaced the couch [see 02 Board Review].

§ 87(2)(b) also alleged that the officers damaged her front door and bedroom door. She observed the damage to both doors after the officers left. According to § 87(2)(b) the lock cylinder was hanging from the front door. She had not seen any officer touching the lock prior to entering her apartment but testified that the lock was brand new and had recently been replaced by the landlord. § 87(2)(b) submitted a photo of her door, which shows what appears to be dents and scratches, but the lock cylinder cannot be seen clearly [see 23 Board Review]. According to § 87(2)(b) her bedroom door was removed from its hinges. She testified that

Sgt. Albertelli was the only officer to search her bedroom. § 87(2)(b) has not repaired the bedroom or front door because she plans to move [see 01-02 Board Review].

§ 87(2)(b) made no mention of damage to either the front door or bedroom door in his CCRB testimony, § 87(2)(a) Gen. Mun. § 50-h(3)

Video evidence provided by § 87(2)(b) attorney revealed that § 87(2)(b) was still speaking in an elevated tone and using profanity toward the officers at the time he was handcuffed and seated on the couch [see 17 Board Review]. The photo in IA #56 shows that the couch was tilted forward and toward the camera, possible due to a damaged right front leg [see 16 Board Review].

Det. Wright, Det. Graves, and Sgt. Albertelli denied attempting to open the front door of § 87(2)(b)'s apartment forcibly or being in possession of the tools required to do so. Each officer denied using any techniques aside from knocking. All of the officers denied observing any damage to § 87(2)(b)'s front door or lock cylinder during the incident [see 08-13 Board Review].

Det. Wright and Det. Graves both stated that the officers sat § 87(2)(b) down on the couch but denied pushing him onto it. Specifically, Det. Wright stated that § 87(2)(b) was calm at the point he was placed on the couch, and no force was used to get him to a seated position. In his first interview for this case, Sgt. Albertelli stated that § 87(2)(b) may have refused to sit on the couch and may have been pushed. In his second interview, Sgt. Albertelli testified that he did not remember § 87(2)(b) being pushed onto the couch. He stated that the officers physically guided § 87(2)(b) onto the couch. All of the officers denied observing any damage to the couch before or after § 87(2)(b) was placed onto it. None of the officers remembered observing the damage to the couch featured in the photo submitted by § 87(2)(b) [see 08-13, 16 Board Review].

Sgt. Albertelli testified that he was the only officer to search § 87(2)(b)'s apartment. Det. Graves corroborated this testimony, stating that he remained in the living room with § 87(2)(b) and Det. Wright. Det. Wright also stated that he remained with § 87(2)(b) but denied remembering which of his partners searched the apartment. Sgt. Albertelli denied observing any damage to the bedroom door, which was open and on its hinges when he entered the bedroom. Sgt. Albertelli denied removing the bedroom door from its hinges. None of the officers observed any damage to the bedroom door or saw it off its hinges [see 08-13 Board Review].

All of the officers testified that neither § 87(2)(b) nor § 87(2)(b) complained of any of the property damaged mentioned above [see 08-13 Board Review].

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation M - Abuse of Authority: Sgt. John Albertelli refused to provide his name and shield number to § 87(2)(b)

Allegation N - Abuse of Authority: Det. Robert Graves refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) both alleged that § 87(2)(b) asked all three officers for their names and shield numbers as they were leaving the apartment. They both stated that Det. Wright wrote his name on piece of paper in response to this request. However, neither Sgt. Albertelli nor Det. Graves responded to this request. These officers allegedly left without providing their identifying information.

§ 87(2)(b) did not request any officer's name or shield number during the video she recorded [see 17 Board Review].



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In his CCRB statement, Det. Wright stated that he provided his identifying information because he was in charge of the warrant investigation for this case. He did not recall if § 87(2)(b) asked the officers for this information during the incident. He did not recall if either Sgt. Albertelli or Det. Graves provided their names or shield numbers during the interaction. Sgt. Albertelli testified that he did not recall if he or his partners were asked for their names and shield numbers. However, he said that this information was clearly visible on his chest throughout the incident. Det. Graves stated that he did not recall if he was asked for his identifying information. He also said that his shield and nameplate were visible during the incident.

§ 87(2)(b), § 87(2)(g)

Pod: 1

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date